

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 12-03

October 5, 2011

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Anne Purcell, Associate General Counsel

SUBJECT: Casehandling Cost Saving Instructions for Fiscal Year 2012

The Agency is currently under a continuing resolution that will fund the Agency through November 18, 2011 at a level that is 1.503 percent below our FY 2011 level. This continuing resolution reduces the Agency's budget by approximately \$4.25 million dollars below our FY 2011 appropriation. Moreover, there is much uncertainty regarding the Agency's appropriation for the remainder of FY 2012. We want to ensure that we continue to effectively enforce the National Labor Relations Act and service our stakeholders throughout the year. Towards this end, until further notice, we are reinstituting in FY 2012 the casehandling cost savings measures instituted in previous fiscal years, which proved to be very effective.

UNFAIR LABOR PRACTICE SETTLEMENTS AND ELECTION AGREEMENTS

The Field continues to enjoy remarkable success in securing settlements of merit unfair labor practice cases and election agreements to resolve pre-election disputes. Notwithstanding these laudable national performance results, in certain individual Regions, performance in one or both of these areas is below the national figure. The salutary effects of ULP settlements in resolving labor disputes and election agreements in facilitating the resolution of questions concerning representation are obvious and must be pursued. In addition, and of special importance at this time of budget uncertainty, significant savings of Agency staff and budget resources result from high settlement and election agreement rates. It is also true that settlement early in the processing of a merit unfair labor practice case and the negotiation of an election agreement early in the processing of a merit representation case will result in the greatest saving in resources. Accordingly, in all Regional Offices, and especially in those offices where performance in these areas is below the national experience, redoubled efforts should be made to improve performance. In this regard, training for all professional employees should continue to be conducted on settlement techniques when appropriate, settlement coordinators should be active and Regional Directors should be directly involved in settlement efforts. Please consult Memoranda OM 89-91, dated September 29, 1989; OM 97-81, dated December 9, 1997, and OM 98-33, May 12, 1998.

The Agency's three "overarching goals" for casehandling for FY 2012 are to close 85.2% of all representation cases within 100 days, 72% of all unfair labor practice cases within 120 days, and 80.3% of all meritorious unfair labor practice cases within 365 days. Working toward these goals will increase our productivity and, in addition to providing more prompt service to our parties, save Agency resources in the process.

TRIALS AND REPRESENTATION CASE HEARINGS, COMMUNICATION WITH DIVISION OF JUDGES

For those trials that will be going forward despite exhaustive settlement efforts, in order to save on transportation and per diem costs for witnesses, pre-trial preparation should be conducted in the Regional Office, by phone, videoconference, if feasible, or in conjunction with other required travel, if at all possible to keep costs to a minimum. Certainly, the trial attorney should meet in person with witnesses at least on two separate occasions prior to the trial, with one occasion scheduled in coordination with travel to the hearing.¹ Witnesses whose presence at trial must be secured by subpoena at government expense should be required to appear only when their presence is required and should be released as soon thereafter as possible. Other stratagems which may contribute to shorter, more efficiently run trials and representation hearings during the budgetary uncertainty should also be employed:

1. Continue to discourage unduly lengthy records in both unfair labor practice and representation case hearings.
2. In making assignments for trials and hearings that are scheduled for outside of the office city, avoid the assignment of inexperienced counsel to "second chair" senior counsel as a training exercise. Two attorneys should be assigned to out-of-town cases only in large cases requiring those resources.
3. Avoid additional costs to court reporters and interpreters by providing timely notice of the postponement or cancellation of hearings/trials and avoid overtime costs for court reporters unless overtime will allow the Region to conclude the proceeding.
4. Ensure that when facilities must be rented for hearings, trials or elections the least expensive alternatives that will at the same time suit the Agency's needs are chosen.
5. In appropriate cases, have trial attorneys use oral argument at the end of the hearing in lieu of filing post-trial briefs and encourage administrative law judges to issue bench decisions.

In addition, close communication with the Division of Judges with regard to the amendment of complaints and settlement efforts will ensure the Judges schedule the appropriate number of hearing days and avoid unnecessary trips.

¹ See OM 06-16, "Quality Committee Report on FY 2004's Litigation Losses – Credibility", dated November 30, 2005, Section III, Pre-trial Preparation.

INVESTIGATIONS

Alternative Investigatory Techniques - Full use should be made of alternative investigatory techniques. Accordingly, questionnaires, telephone affidavits, videoconference interviews, where feasible, position statements and other techniques that reduce or eliminate the costs usually associated with unfair labor practice investigations should be employed as appropriate. See Memoranda OM 95-15, dated August 22, 1995, and GC 02-02, dated December 6, 2001.² Thus, all Category I and most Category II cases should be investigated consistent with the guidance in those memoranda, unless the Regional Director determines that travel is essential to a quality investigation.

TRAVEL

Travel Coordinator - The Travel Coordinator in each Region should continue to manage Regional travel on a daily basis, clustering travel assignments for Board agents and avoiding nonessential travel while ensuring that appropriate, alternative investigative techniques are employed in lieu of travel whenever possible. Interregional coordination of travel for investigations is encouraged. Travel coordinators in contiguous Regions should be in frequent contact to permit agents traveling in the outskirts of their Regions to assist in investigations or elections in the outskirts of a contiguous region. Use of GSA cars when available and when cost effective should be encouraged. See Memorandum OM 03-89, dated August 1, 2003. When travel by air is absolutely necessary, the most cost efficient arrangements should be employed. Regions are encouraged to utilize GSA vehicles at their disposal whenever possible.

² GC 02-02 states, at. p. 3:

Face-to-face affidavits remain the cornerstone of our investigations. Experience has shown, however, that there are also alternative investigative techniques that can save time and resources without adversely affecting quality in certain types of cases. Especially where significant travel would otherwise be involved, such techniques save both considerable time and resources, thereby allowing Board agents to address other matters. While the need to utilize these techniques, such as questionnaires and telephone affidavits, was originally based upon a shortage of casehandling resources, even with adequate resources the use of these techniques in the investigation of certain types of cases should be continued in order to promote both efficiency and economy. In particular, all Regional Offices should utilize alternative techniques for all Category I cases and continue to use them for certain Category II cases, such as a Section 8(a)(5) or 8(b)(3) request for information or a Section 8(b)(1)(A) duty of fair representation allegation, which, as previously noted, will now be placed in Category II. Additionally, consistent with Memorandum OM 99-75, Regional Directors continue to have the discretion to use these techniques for other Category III and II cases, where appropriate. As stated in that memorandum:

In situations where substantial travel will be necessary, the Regional Directors may exercise their discretion to take telephonic affidavits in circumstances where the affidavit is a supplemental statement, where individuals are providing evidence that corroborates evidence presented in a face-to-face affidavit or where there is a very high probability that the case has no merit.

(Footnotes omitted).

Notwithstanding the Agency's current budget uncertainty, we must continue to pursue the General Counsel's Outreach Initiative. However, in doing so we must be mindful of the costs involved and the competing demands on our scarce budget resources. When engaging in outreach activities, we must make every effort to combine necessary outreach travel with travel for casehandling, thereby saving additional costs. Similarly, full advantage should be made of the outreach materials we now have available (see the Outreach section of the Operations page of the "Surfboard" intranet site).

Travel Management Centers – Generally, air travel arrangements should be made through the Carlson Travel Management Center. When using these centers, air travel may be charged against the Regional Agency account or an employee's government Citibank card. Either way, the Agency receives a rebate on the expenditure. In booking air travel, Carlson charges the Agency \$28.24 whether lodging and/or rental car arrangements are also needed. When the Regions are certain that there will not be a cancellation of an airline reservation, air travel should be booked directly with the airlines.

If air travel is not involved and only lodging and/or car rental are required, employees should make reservations directly with the hotel and/or car rental agency since Carlson charges the Agency \$11.00 for booking lodging and/or car rental reservations. Also, if hotel or car reservations are booked online through E2 Travel, the Agency is charged \$4.75. Whenever possible, employees are also required to use their government Citibank card to charge lodging, rental cars, and subsistence expenses for which the Agency will also receive a rebate. Employees should obtain and use tax exemption certificates or forms where appropriate. Employees should also be reminded that they can participate in the Gainsharing Travel Savings Incentive Award Program. See APC 00-05.

Travel Responsibilities of the Parties – Except when Board agent travel can be coordinated, or under special circumstances, all institutional charging parties and their witnesses within 120 miles of the field office location should be encouraged to travel to the office to present evidence and give affidavit testimony. It is reserved to the sound discretion of the Regional Director to determine whether Board agent travel should be invested in the investigation where the institutional charging party or its witnesses are unwilling to travel up to 120 miles to the Regional Office. In exercising this discretion, the Director should be sensitive to the hardship such a requirement might impose on certain parties. Charged parties and their witnesses located within 120 miles should be strongly encouraged to travel to the office. If the charged party is unwilling to provide affidavits, the Board Agent should generally not go to the Charged Party's facility, instead requesting video conference interviews and a position statement. Unfair labor practice and representation case hearings should be conducted in the field office in cases involving employers located within 120 miles from the field office city. Regional Office managers must exercise judgment where the presence of witnesses at hearings must be compelled by subpoena and costs associated with subpoenas make the conduct of the hearing in a location remote from the Region cost effective. Use of video

conferencing for Representation cases should be considered where travel costs are substantial. See Memorandum OM 11-42 and 08-20.

MAIL, WRITTEN COMMUNICATIONS

Decrease Reliance on Private Delivery Services and Certified Mail - Regions should significantly decrease the use of UPS (unless economically justified) and certified mail, especially for interoffice mail. Eliminate the use of these services if “next day delivery” would mean Saturday delivery. Of course, use of certified mail must still be used insofar as the Rules and Regulations require such service.

Electronic Mail - Increase use of E-mail in place of correspondence to and from Headquarters and between field offices and with the parties, consistent with Memorandum OM 03-74, dated May 6, 2003.

SUPPLIES

- Office supplies and services should be purchased with an Agency Purchase Card. Use of the card ensures that the price at purchase is the price billed to the Agency and a rebate is paid to the Agency based upon the amount charged.
- Take advantage of discounts offered by vendors and creditors for processing and paying invoices prior to their due date. Consult Block 16 on the purchase orders to determine if such a credit is applicable.

PHONES AND PHOTOCOPY EQUIPMENT USE

Phone Lines - Disconnect unused leased phone lines. Phone line costs vary from location to location but average approximately \$35.00 per month. Generally, there is no cost to disconnect a phone line, but reactivation costs can be substantial. Thus, the Regions should balance these costs with anticipated savings. If a line is to be unused for at least 4 to 6 months, a net savings to the Agency would result if the line is disconnected, even if a reconnection charge is later incurred. Contact Rob White, NLRB Telecommunications, for information specific to your city.

Photocopy Machine Use - Use of office photocopy machines should be prudently monitored and abuse prevented. Double-sided photocopying should be used whenever possible.

PAPER REDUCTION

- Representation Case Decisions, Complaints and Notices of Hearings are often double-spaced. While this is not required by the Agency’s rules and regulations, the Board’s preference is that these documents be submitted double spaced. However, please consider using single space and double-sided copying for documents that are not filed with the Board or courts.

- Maximize the use of E-mail for interoffice announcements of general interest and for posting of vacancy notices. Discourage the practice of printing out e-mail messages, except where necessary to make the case file complete.
- Printed copies of official documents such as complaints should be reduced to the minimum number necessary.
- E-mail all documents submitted to Headquarters.
- When forwarding non-bargaining unit and PMRS appraisals to Headquarters, please continue to place in the E-room. There is no need to provide a separate paper copy.
- When forwarding bargaining unit appraisals to Headquarters, please scan a signed copy and place in the E-room. There is no need to provide a separate paper copy.
- The Injunction Litigation Branch will continue to distribute 10(j) and 10(l) briefs by electronic means only. The Appellate and Supreme Court Litigation Branch will distribute briefs, cert. memos and briefs electronically.

Vigilance in the management of our limited resources in the coming year must be maintained if we are to continue to enforce the Act effectively and provide the essential services we perform to the national economy and to individual working people and businesses across the land while avoiding dislocations of our employees. Continuing the casehandling efforts that have resulted in our enviable record of performance will greatly contribute to this effort as well. Hiring opportunities in FY 2012 will likely be extremely limited, so we must carefully manage our resources in order to handle the Agency's caseloads as effectively as possible.

We appreciate all of your past efforts in controlling costs and will keep you advised of the FY 2012 budget situation as it develops. If you have any questions about the foregoing, please contact your Assistant General Counsel or Deputy or me.

/s/
A.P.

cc: NLRBU

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